

CALPIRG

3486 Mission Street
San Francisco, CA 94110
(415) 206-9338
(415) 206-1859

10.17

Date: 6/13/02

Total No. of Pages 4

To: Craig J. Wilson

Fax No. (916) 341-5550

From: Teresa O'Leary

Phone No. _____

Re: 303 (a) List - Draft Report

Comments

10,17



STATE OFFICE
Los Angeles
3435 Wilshire Blvd. #380
Los Angeles, CA 90010
(213) 251-3680
(213) 251-3699 Fax
Http://www.calpirg.org

LEGISLATIVE OFFICE
Sacramento
926 J St. #523
Sacramento, CA 95814
(916) 448-4516
(916) 448-4580 Fax

June 12, 2002

Craig J. Wilson, Chief
Monitoring & TMDL Listing Unit
Division of Water Quality
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

RE: Comments on "Revision of California's Clean Water Act Section 303(d) List of Water Quality Limited Segments" (Draft, April 2002)

Dear Mr. Wilson:

On behalf of California Public Interest Research Group (CALPIRG), I write to provide comments on the State Water Resources Control Board's (SWRCB) draft "Revision of California's Clean Water Act Section 303(d) List of Water Quality Limited Segments" (Draft Report), to be submitted to the United States Environmental Protection Agency in October 2002.

As you are aware, the Section 303(d) list of impaired waters and the corresponding TMDL program are both important components in the continued success of the federal Clean Water Act (CWA). CALPIRG commends State Water Board efforts made thus far towards developing a comprehensive and defensible Section 303(d) list; especially the addition of 195 water quality limited segments to the list.

However, the proposed three-list scheme raises concerns. According to the Draft Report, water bodies will be placed on a "Watch List" if there is insufficient data and information to list them on the 303(d) list, and placed on a "TMDLs Completed List" to show progress in developing TMDLs. As the Draft Report concedes, the proposed "Watch List" and "TMDL Completed List" are not part of the CWA statutory scheme.

Section 303(d) of the CWA, (33 USC 1250, et seq., at 1313(d)), mandates the identification of waters that do not meet water quality standards after applying certain required technology-based effluent limits ("impaired" water bodies). States are required to compile this information in *one list* and submit the list to USEPA for review and approval. The statutory scheme of the CWA and the implementing regulations (40 C.F.R. § 130.7) contemplate *only one list, the 303(d) list*. CALPIRG is in agreement with comments articulated by members of the AB 982 Public Advisory Group that the State Board should stick closely to the federal regulations that steer the 303(d) process.

The "Watch List"

Although the Draft Report claims the "Watch List" water bodies will be of "high priority for monitor and consideration of the next 303(d) list", the next revision of and additions to the 303(d) list are not to be completed until 2004. Therefore, CALPIRG is

Berkeley
2034 Blake St. #9
Berkeley, CA 94704
(510) 644-3454

San Diego
3960 Park Blvd. Ste A
San Diego, CA 92103
(619) 297-5512

San Francisco
3486 Mission St.
San Francisco, CA 94110
(415) 206-9338
(415) 206-1859 Fax

Santa Cruz
149 C Josephine St.
Santa Cruz, CA 95060
(831) 459-0563

Santa Barbara
1129 State St. #10
Santa Barbara, CA 93101
(805) 564-1207
(805) 965-8939 Fax

concerned that the "Watch List" would serve as a "purgatory" of sorts - a waiting list for non-action.

In other words, there is much concern that the "Watch List" would serve as a loophole. Vague assurances that these water bodies will be examined more closely in the future are not enough. The key question to ask during the listing process remains: "Is the water body meeting or in violation of the standards?" If there is indeed anecdotal, minimal or contradictory information pertaining to the water quality of a water body being considered for 303(d) listing, then it is in the public interest to go ahead and list the water body on the 303(d) list, perhaps under the designation of "low-priority". The appropriate next step then would be to conduct research and assessment work as part of the TMDL development process, characterizing the reasons for non-attainment, identifying sources of contamination, and identifying proper source controls. Doubt regarding the propriety of listing a particular water body should be resolved in favor of precaution and protection - two key values embodied by the CWA.

It has been suggested that the watch list could serve as a placeholder list for water bodies that may require compromise in making a 303(d) listing determination. The creation of more than one list is itself a compromise of the goals of the CWA and specifically the objectives of the 303(d) list and the creation of TMDLs. Given the fact that TMDLs for "high priority" 303(d) listings are not scheduled to be completed until 2004, placing impaired water bodies on a "Watch List" will inevitably and unquestionably result in more delay in addressing ongoing water quality problems.

The "TMDL Completed List"

The "TMDL Completed List" is not contemplated by the CWA either. As members of the AB 982 Public Advisory Group point out, there is no basis in the CWA for delisting a water body simply because a TMDL has been prepared. Moreover, 40 C.F.R. § 130.29(b), (effective 2003) directly states that State Boards "must keep each impaired water body on your list for a particular pollutant unit it is attaining and maintaining the applicable water quality standards for that pollutant." Keeping to the implementing regulations is important to maintain the validity of State Board actions. Deviating from the statutory mandates and creating additional lists that are contradictory to the regulations suggests that the State Board is engaging in decision-making based on self-interest and creates an appearance that the water bodies' contamination problems have been remedied. While many TMDLs have been completed, the development of other TMDLs remains in limbo. Separately listing the few water bodies that have TMDLs, while perhaps a seemingly wise public relations move for the State Board, is premature. Many TMDLs have very lengthy implementation periods and the effective delisting of these is perhaps many years in advance of any noticeable improvements in water quality. The "TMDL Completed List" is unreasonable, misleading, and unnecessary.

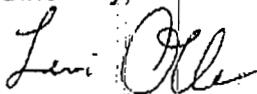
Conclusion

The "Watch List" and "TMDL Completed List" should be eliminated. Both lists are outside the scope of what is intended by the CWA. The threshold question for listing decisions is simply: "Is the water body impaired, or is it not?" If there are questions regarding the quality and/or quantity of data for a particular water body, the State

Board's actions should err on the side of caution and list the body on the 303(d) list. Furthermore, only the attainment and maintenance of applicable water quality standards can operate to allow removal of a water body from the 303(d) list. The TMDL development process and its corresponding public participation elements are the proper framework to analyze source control needs and options.

Thank you for consideration of our views. CALPIRG hopes the State Board will consider the merits of these comments, recognizing the importance of a continued partnership between state/regional agencies and the various groups of concerned citizens, both of who are working to protect and restore California's valuable water resources.

Sincerely,



Teresa Olle
Toxics Program Director
teriolle@calpirg.org